

Exhibit No. 15

Case No. 22-cv-00384-JSR

Declaration of Rhett O. Millsaps II In Further Support Of
Rothschild's Motion For Summary Judgment

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

HERMÈS INTERNATIONAL and)
HERMÈS OF PARIS INC.,)
)
Plaintiffs,)
)
vs.) No.
) 1:22-CV-00384-JSR
MASON ROTHSCHILD,)
)
Defendant.)
-----)

September 23, 2022
9:32 a.m.

Deposition of BLAKE GOPNIK, held at the
offices of Baker & Hostetler LLP, 45
Rockefeller Plaza, New York, New York,
pursuant to subpoena, before Laurie A.
Collins, a Registered Professional Reporter
and Notary Public of the State of New York.

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(via videoconference)

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1 Gopnik

2 A. Not for a layman, just as I wouldn't be
3 able to tell a knowledgeable sports reporter from
4 one who isn't knowledgeable.

5 Q. Are there any objective criteria that 12:07:53
6 can be used to distinguish a knowledgeable art
7 critic from an ignorant art critic?

8 A. I think if you looked at the course of
9 their career and saw if they were -- held
10 interesting, complex views about art, you'd say, 12:08:08
11 yes, this person is interesting and this other
12 person uses clichés, et cetera, and therefore is
13 not interesting.

14 (Discussion off the record.)

15 Q. Are you aware of any consensus among 12:08:57
16 art critics that the images in NFTs produced and
17 sold by Mason Rothschild find their natural and
18 obvious home among the artistic experience carried
19 out by modern artists over the last century?

20 A. There is no consensus among art critics 12:09:15
21 on pretty much any issue. For instance, I find
22 the Mona Lisa a fairly trivial object, and most
23 art critics would disagree with me.

24 Q. Referring to page 5, paragraph 11. The
25 first sentence begins, By the end of the 1960s, 12:10:02

1 Gopnik

2 would surprise me if there was someone who said, I
3 am now going to give you a definition of business
4 art. That would seem lame within the context of
5 the -- the social context of art history. 01:25:03

6 I should say I'm excluding here the
7 things that I've written where I discuss business
8 art, which I tend to agree with.

9 Q. Fair enough.

10 Do you agree with the statement that 01:25:24
11 business art is the step that comes after art?

12 A. No.

13 Q. You don't agree with that statement?

14 A. No.

15 Q. Is that a statement that Andy Warhol 01:25:35
16 made?

17 A. It is a statement attributed to Andy
18 Warhol.

19 Q. Okay.

20 And is it your understanding that he 01:25:45
21 didn't in fact make that statement?

22 A. With Andy Warhol unfortunately it's
23 very hard to tell what he said and what he didn't,
24 because there's usually a -- his art was
25 collaborative in the extreme. So there's often a 01:25:57

1 Gopnik

2 team of people working on any of his projects,
3 including his literary projects. His texts are
4 often meant to mislead and to confuse as well.

5 Q. Do you have a belief as to whether Andy 01:26:18
6 Warhol made the statement that business art is the
7 step that comes after art?

8 A. It is present in texts that bear his
9 name.

10 I'm sorry if I'm being difficult about 01:26:30
11 this. But figuring out what Andy Warhol meant or
12 said is complicated.

13 Q. Understood.

14 Although you've spent as much time what
15 Andy Warhol meant or said as just about anyone out 01:26:43
16 there.

17 A. That's why it takes so long, because
18 it's complicated.

19 Q. And in your research have you drawn any
20 conclusions as to whether Andy Warhol made the 01:26:51
21 statement that business art comes after art?

22 A. My conclusions about that statement was
23 that it was actually component in his business art
24 practice.

25 Q. And what do you mean that it's a 01:27:11

1 Gopnik

2 business art?

3 A. I'm afraid I don't really know what
4 work means. That's a very general concept. But I
5 would say that -- the question is in what context 01:31:21
6 is it? The answer is the same as the previous
7 one. When there are clues that tell you that
8 there's something unusual going on that might be
9 worthy of being considered in the history -- in
10 terms of the history of art. 01:31:36

11 Q. When I asked if working is art, I was
12 referring to a quote that appears in your report
13 on page 9. It's a quote I believe of your
14 textbook --

15 A. My book, I'm sorry. 01:31:49

16 Q. Sorry, your book, about your -- your
17 biography of Andy Warhol.

18 A. What page is it on?

19 Q. It's page 9, it's paragraph 19.

20 A. Yes. 01:32:05

21 Q. Do you agree with the statement that --
22 from Andy Warhol -- attributed to Andy Warhol that
23 you've quoted here that working is art?

24 A. No, but I don't think that's in fact
25 what he's claiming. I agree with the gist of what 01:32:41

1 Gopnik

2 his goal is in making this claim, but obviously
3 not all work is art.

4 Q. Do you agree with his statement that
5 good business is the best start? 01:32:54

6 A. No, because I don't think that that is
7 in fact the gist of what he's actually doing, what
8 the work that sentence is doing. This sentence is
9 a work of art and can only be understood in the
10 context of other works of art. That's why I can't 01:33:12
11 either agree or disagree with it as a normal
12 statement that someone might make.

13 Q. What context do you need to understand
14 that the sentence is a work of art?

15 A. You need to understand the work of Andy 01:33:24
16 Warhol, the work of Marcel Duchamp, the work of
17 other artists working in what I call business art,
18 what is business art at this time in history.

19 There's a set of contexts that make you
20 realize, oh, what Andy Warhol is doing here is not 01:33:37
21 a normal statement about the nature of the world,
22 and everyone knows that Andy -- everyone knew at
23 the time that Andy Warhol made statements that
24 didn't make normal kinds of sense, because Andy
25 Warhol is an artist. 01:33:49

1 Gopnik

2 Q. Do you consider Andy Warhol's use of
3 that photograph as appropriation art?

4 A. That's an interesting question. No.

5 Q. If you could look at the second page 01:46:57
6 under the heading of appropriation art.

7 A. I see that.

8 Q. Does that refresh your recollection if
9 at one time you thought that this case did involve
10 appropriation art? 01:47:12

11 A. Let me just read the argument I was
12 making at the time.

13 Q. Okay. You may.

14 A. I actually think I'm not arguing about
15 whether this image is appropriation art. That's 01:47:45
16 not the point of that paragraph.

17 Q. Okay. What is the point of the
18 paragraph?

19 A. The point of the paragraph is if the
20 decision comes out in a certain way in the 01:47:53
21 Goldsmith case then it would imperil appropriation
22 art.

23 Q. And what do you mean by "imperil
24 appropriation art"?

25 A. It will prevent artists from producing 01:48:06

1 Gopnik

2 appropriation art because the source could then
3 claim that there's been a copyright infringement.

4 Q. I want to refer you to the next heading
5 under why not just pay the fee. And you're quoted 01:49:08
6 as saying, Yeah, don't you just love it when
7 judges decide that they're art critics? I think
8 I'm going to sue them, you know, for taking over
9 my profession.

10 I'm assuming you were joking about the 01:49:26
11 lawsuit?

12 A. No, I'm going to absolutely sue them.
13 Yes, I'm sorry, I shouldn't answer facetiously.
14 Yes, I was joking about the lawsuit.

15 Q. What about the ruling in the Goldsmith 01:49:40
16 case indicated to you that judges were deciding
17 that they're art critics?

18 A. In the very strange decision from the
19 Second Circuit, they said that only collage art --
20 this is to distill out their argument -- that of 01:50:00
21 all the possible forms of art only collage was
22 significant enough artistic gesture to warrant
23 protection through fair use.

24 Q. And you disagree with that conclusion?

25 A. I do. 01:50:18

1 Gopnik

2 Q. What?

3 A. To the -- oh, I'm sorry, do you mean --
4 you don't mean -- I thought you meant the
5 Goldsmith case. 01:55:15

6 Q. I see we were miscommunicating.

7 A. Yes.

8 Q. In this case, the Hermès versus
9 Rothschild, do you understand your opinion may be
10 submitted to the judge? 01:55:26

11 A. Yes, I do.

12 Q. And what is your understanding of the
13 purpose of submitting that opinion to the judge?

14 A. I'm trying to think about what my role
15 is in this. To convince him of my particular 01:55:42
16 reading of what MetaBirkins are and how they
17 function in society.

18 Q. I think you said earlier that art
19 critics disagree with one another.

20 A. They do. 01:56:02

21 Q. Can you conceive that there would be
22 another art critic that would have an opinion that
23 the MetaBirkin NFT project is not art?

24 MR. SPRIGMAN: Objection.

25 A. Yes, and they would be wrong. 01:56:18

1 Gopnik

2 A. Well, he's got many different firms
3 under his aegis. One is I believe called Science,
4 and the others -- he just closed a gallery on the
5 South Bank, which is a more museum-like space. 04:25:27
6 But I think Science is his main corporate entity.
7 If I mention something else in my report, I would
8 be happy to be reminded.

9 Q. Did he also have one called White Cube?

10 A. No, that is not his gallery. That is 04:25:40
11 the gallery that represents him. He doesn't own
12 it or any relationship like that.

13 Q. Okay. And in naming his gallery, does
14 he give it the name of another famous gallery
15 owner such as Leo Castelli? 04:26:02

16 MR. SPRIGMAN: Objection.

17 A. I'm sorry, as I just said, he doesn't
18 have a gallery to name. He's an artist. He's not
19 a dealer.

20 Q. Okay. 04:26:09

21 In your prior answer you said that
22 Hirst has many firms, one you believe is called
23 Science. What is the business of Science?

24 A. I think -- Damien Hirst is a very rich
25 person who employs a great number of lawyers to 04:26:33

1 Gopnik

2 try to complicated or -- what's the right word? --
3 make his financial situation more interesting.

4 So various different activities he has
5 are held by various firms, some of which I believe 04:26:46
6 can go bankrupt without necessarily affecting his
7 own finances. So he's -- his practice, especially
8 his business art practice, is disseminated among
9 lots of different firms.

10 I believe Science is in charge of 04:27:00
11 selling different Damien Hirst projects, as part
12 of his business art, among other things.

13 Q. And for any of his firms, does Damien
14 Hirst adopt the trademark of other companies?

15 MR. SPRIGMAN: Objection. 04:27:15

16 A. His firms. No. He may have works --
17 he does have works of art that reference other
18 people's trademarks. But, no, his firms do not.
19 I should say I believe he has works of art that
20 reference other trademarks. 04:27:33

21 MR. SPRIGMAN: So it's 4:27. How long
22 have we've been on the record all together?

23 MR. FERGUSON: If you want to take a
24 break now, I think I'm pretty close to being
25 done. 04:27:58

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C E R T I F I C A T E

STATE OF NEW YORK)
 : ss.
COUNTY OF NEW YORK)

I, LAURIE A. COLLINS, a Registered
Professional Reporter and Notary Public
within and for the State of New York, do
hereby certify:

That BLAKE GOPNIK, the witness whose
deposition is hereinbefore set forth, was
duly sworn by me and that such deposition
is a true record of the testimony given by
the witness.

I further certify that I am not
related to any of the parties to this
action by blood or marriage and that I am
in no way interested in the outcome of this
matter.

IN WITNESS WHEREOF, I have hereunto
set my hand this 27th day of September
2022.


LAURIE A. COLLINS, RPR